

**Congress of the United States**  
**Washington, DC 20515**

May 21, 2019

The Honorable R. Alexander Acosta  
Secretary  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210

**RE: RIN 1235-AA20: Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees**

Dear Secretary Acosta:

We write in strong support of the Department of Labor’s (“Department”) proposed rule regarding overtime pay under the *Fair Labor Standards Act* (“FLSA”).<sup>1</sup> This proposal followed the Department’s extensive efforts to solicit public input through its July 2017 Request for Information<sup>2</sup> and multiple public listening sessions across the country.<sup>3</sup>

The FLSA requires employers to pay employees overtime pay for each additional hour worked beyond a 40-hour workweek. However, certain employees, such as executives who hire or fire other employees, may be exempt from receiving overtime pay.<sup>4</sup> Department regulations have generally required that for an employee to be exempt, among other conditions, the employer must pay the employee a minimum salary level. Under the current regulations, an exempt employee’s salary must be at least \$23,660 annually.

In 2016, the excessive and misguided final rule from the previous administration’s Department of Labor gave employees and employers less than seven months to prepare before more than doubling the salary threshold to \$47,476 annually.<sup>5</sup> In our view, that increase was unwarranted. The 2016 rule also compelled the Department thereafter to update the salary level automatically every three years.<sup>6</sup> In fact, the first automatic update would have resulted in a salary level of approximately \$51,168 annually.<sup>7</sup>

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<sup>1</sup> See generally *Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees*, 84 Fed. Reg. 10,900 (proposed Mar. 22, 2019) (to be codified at 29 C.F.R. pt. 541) [hereinafter *Overtime Rulemaking*].

<sup>2</sup> See generally *Request for Information; Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees*, 82 Fed. Reg. 34,616 (July 26, 2017) (the Department published a Request for Information seeking input prior to formulating a proposal to revise the Fair Labor Standards Act overtime regulations).

<sup>3</sup> *Overtime Rulemaking*, *supra* note 1, at 10,903. The Department of Labor conducted listening sessions in all of the nation’s five Wage and Hour regions.

<sup>4</sup> 29 U.S.C. § 213(a)(1) (2017).

<sup>5</sup> *Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees*, 81 Fed. Reg. 32550 (May 23, 2016).

<sup>6</sup> *Id.* at 32,551.

<sup>7</sup> *Id.* at 32,544.

Thankfully, the 2016 rule never went into effect. On August 31, 2017, a federal judge invalidated the rule, finding that the Obama administration had “exceeded its authority and gone too far with [its] Final Rule.”<sup>8</sup>

As members of Congress, we thoroughly examined the consequences of the Obama overtime rule. The 2016 rule would have had serious consequences for thousands of employers around the country, including charities and educational institutions. The nonpartisan Congressional Budget Office predicted that cancelling the Obama rule would reduce nonprofit employers’ compliance costs by \$30 million in December 2016, \$250 million in 2017, and between \$120 million and \$210 million annually from 2018 to 2022.<sup>9</sup> In Tennessee alone, the Obama rule was projected to cost each four-year college or university at least \$1.3 million.<sup>10</sup> Queens University of Charlotte, North Carolina, estimated the Obama rule would cost the university what it described as a “staggering” \$1.125 million.<sup>11</sup> Operation Smile, a charity that funds children’s cleft palate surgeries, estimated that the Obama rule could have resulted in at least 3,000 fewer surgeries each year.<sup>12</sup>

To address these concerns, on March 17, 2016, Senator Tim Scott (R-SC) introduced the *Protecting Workplace Advancement and Opportunity Act*, which would have required the Department to conduct a comprehensive economic analysis prior to issuing any rule similar to the then-proposed Obama rule.<sup>13</sup> Furthermore, on June 7, 2016, Senate Health, Education, Labor and Pensions (HELP) Committee Chairman Lamar Alexander (R-Tenn.) introduced a Congressional Review Act Resolution of Disapproval to block implementation of the Obama rule.<sup>14</sup> In the U.S. House of Representatives, the House Education and the Workforce Committee held four hearings during the 114th Congress and another during the 115th Congress examining the previous administration’s overtime rulemaking. On September 25, 2017, Education and the Workforce Committee Chairwoman Virginia Foxx (R-NC) and Workforce Protections Subcommittee Chairman Bradley Byrne (R-AL) submitted a comment letter to the Department in response to the July 2017 Request for Information. The comment letter reflected testimony received by the Committee during these hearings and noted that the 2016 rule failed to consider adequately the negative economic consequences for small businesses, nonprofit organizations, and colleges and universities. Specifically, the letter stated that the rule would have diminished workplace flexibility and threatened opportunities for career advancement, harming the very workers the rule claimed to protect.

On April 1, 2019, the Department proposed a rule that, unlike the 2016 rule, reasonably updates the overtime threshold in a way that will not have the same troubling effects for workers and employers. Even more, in the preamble to the proposed regulation, the Department states its intention to update the overtime salary level once every four years through notice-and-comment rulemaking, unless the Secretary of Labor declines to propose an update due to economic or other factors.<sup>15</sup> This is a significant improvement from the discredited 2016 rule which would have automatically updated the overtime salary level once every three years using a dubious methodology and without providing opportunities for public comment.<sup>16</sup>

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<sup>8</sup> Nevada v. U.S. Dep’t of Labor, 275 F. Supp. 3d 795, 807 (D. Tex. 2017).

<sup>9</sup> CONG. BUDGET OFFICE, THE ECONOMIC EFFECTS OF CANCELLING SCHEDULED CHANGES TO OVERTIME REGULATIONS 29 (2016).

<sup>10</sup> Letter from Dr. Claude O. Pressnell, Jr., President, Tenn. Indep. Colleges & Universities Ass’n, to The Honorable Lamar Alexander, (Feb. 22, 2016), available at <https://www.help.senate.gov/imo/media/doc/Alexander%20Letter%20from%20TICUA%20on%20DOL%20Overtime.pdf>.

<sup>11</sup> Letter from Matt Packey, Chief Fin. Officer, Queens Univ. of Charlotte, to Howard Shelanski, Adm’r, Office of Info. & Regulatory Affairs, The Office of Mgmt. & Budget (Apr. 19, 2016).

<sup>12</sup> 162 Cong. Rec. S6269 (daily ed. Sept. 29, 2016) (statement of Sen. Alexander).

<sup>13</sup> Protecting Workplace Advancement and Opportunity Act, S. 2707, 114th Cong. (2016).

<sup>14</sup> See S.J. Res. 34, 114 Cong. (2016).

<sup>15</sup> *Overtime Rulemaking*, *supra* note 1, at 10,914-10,915.

<sup>16</sup> Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, 81 Fed. Reg. 32,551-32,552 (May 23, 2016).

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The Department has an obligation to collect, review, and listen to the comments of Americans whose lives and businesses are impacted by regulatory proposals. This proposed rule shows the Department's deep commitment to that principle. It is vital the Department responsibly update the current overtime rules only after an inclusive and meaningful process where workers, small businesses, non-profits, educational institutions, and others can provide input.

Thank you for your attention to our views and comments.

Sincerely,



Lamar Alexander  
Chairman  
U.S. Senate Committee on Health,  
Education, Labor and Pensions



Virginia Foxx  
Ranking Member  
U.S. House of Representatives Committee  
on Education and Labor



Johnny Isakson  
Chairman  
Subcommittee on Employment and  
Workplace Safety  
U.S. Senate Committee on Health,  
Education, Labor and Pensions



Bradley Byrne  
Ranking Member  
Subcommittee on Workforce Protections  
U.S. House of Representatives Committee  
on Education and Labor



Tim Scott  
U.S. Senator